Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Request to Update Default Compensation Rate for	)	WC Docket No. 03-225
Dial Around Calls from Payphones	)	RM No. 10568

COMMENTS OF THE
ILLINOIS PUBLIC TELECOMMUNICATIONS ASSOCIATION

Michael W. Ward
Michael W. Ward, P.C.
1608 Barclay Blvd.
Buffalo Grove, IL 60089
(847) 243-3100

Attorney for the Illinois Public
Telecommunications Association

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The Illinois Public Telecommunications Association ("IPTA") is an Illinois trade association comprised of 75 independent payphone service providers ("IPPs") in the state of Illinois plus related service providers. The IPTA hereby submits these comments on behalf of its members in response to the Commission's Notice of Proposed Rulemaking to consider whether to prescribe a new default compensation rate for dial-around calls from payphones. [1] Based on the actual dial-around compensation data for a marginal payphone, the per call rate for dial around compensation needs to be increased to $0.612 per call. Furthermore, the IPTA respectfully submits that rather than changing the dial-around compensation scheme to a caller pays system, the Commission should modify the current systems standards to create market incentives for better efficiency and enforcement of the current scheme.

The overall requirement of the rulemaking proceeding is to implement and effectively enforce the mandate of Section 276 of the Telecommunications Act of 1996 ("TA'96") to

> "promote the widespread deployment of payphone services to the benefit of the general public … (through) regulations that – (A) establish a per call compensation

[1] *In the Matter of Request to Update Default Compensation Right for Dial-Around Calls from Payphones,* WC Docket No. 03-225, RM No. 10568, released October 31, 2003 ("*NPRM*").

> plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone …"
>
> 47 U.S.C. 276(b)(1).

Both the rules currently in force and those to be adopted by the Commission in this proceeding must be analyzed in the context of effectively implementing and enforcing the objectives and statutory directive as found in Section 276. A review of the current effectiveness of that implementation establishes the need for further development of the rules and rates.

The Commission seeks comment on whether to prescribe a different payphone compensation rate and on the amount of that rate. It seeks comment on the cost studies presented in the petitions by the American Public Communications Counsel ("APCC") [2] and the RBOC Payphone Coalition ("RBOC Coalition") [3], as well as inviting commenting parties to submit additional studies.

The Commission has tentatively concluded that the methodology adopted in the *Third Report and Order* [4] is the appropriate methodology. This methodology uses a bottom-up analysis of fully distributed costs to determine the appropriate amount of costs that need to be recovered through a rate based on the average monthly call volume at a marginal payphone. The Commission seeks comment on the input adopted by the Commission and any additional inputs due consideration. Finally the Commission has tentatively concluded not to adopt a "caller-pays" compensation scheme proposed by Sprint.

I. THE DIAL-AROUND COMPENSATION RATE SHOULD BE INCREASED TO $0.612 PER CALL WITH ANNUAL ADJUSTMENTS.

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[2] Request That The Commission Issue A Notice Of Proposed Rulemaking (Or) In The Alternative, Permission For Rulemaking) To Update Dial-Around Compensation Rate (Filed Aug.29 2002)("APCC Petition"); On August 30, 2002 APCC Filed a Corrected Copy of It's Petition.

[3] Petition for Rulemaking to Establish Revised Per-Call Payphone Compensation Rate (filed Sept. 4, 2002) ("RBOC Petition").

[4] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128, Third Report and Order~~,~~ and Order on Reconsideration of the Second Report and Order ("*Third Report and Order"*).

The IPTA submits the instant comments to review the objective of the compensation scheme adopted by the Commission in light of the factual record developed since 1998. The Commission's *Third Report and Order* implemented a "bottom-up" methodology as the means of satisfying its statutory directives. [5] Through this method the Commission first identified the costs attributable to an individual payphone that were relevant to the provision of dial-around calls. These costs included joint and common costs. The Commission determined that the relevant payphone costs to be recovered were $101.29 per payphone per month.[6] The Commission then determined that the calling traffic through the payphone was the means through which the costs attributable to the provision of payphone services would be recovered. The Commission identified three types of payphone call traffic: coin calls; coinless calls using the long distance carrier selected by the payphone owner; and "dial-around" calls, where the caller makes a coinless call using a carrier other than the payphone's presubscribed long distance carrier.[7] The Commission further determined that dial-around calls constituted approximately 32.4% of the payphone call traffic [8]. This equated to $32.80 in monthly payphone costs to be recovered through the dial-around call traffic.

The Commission further determined to utilize a marginal payphone's call traffic as a basis for recovering these costs, to meet the dual directives of Section 276 of the TA'96. The Commission concluded that the recovery of costs for a marginal payphone station would ensure compensation for each and every completed call at a level that could sustain marginal payphones in order to also promote the widespread development of payphone services for the benefit of the general public. The Commission estimated the call traffic of a marginal payphone station to be

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[5] *NPRM*, para .9.
[6] *Third Report and Order,* para. 152, 191.
[7] *NPRM*, para.4, fn. 12.
[8] *Third Report and Order,* para. 151.

439 calls per month, of which 142 calls were expected to be dial-around calls.[9] In determining the rate to be applied at a per call compensation plan, the Commission divided the $101.29 cost to be recovered by the expected marginal payphone call traffic of 439 calls to determine the rate needed to be achieved per compensated call. This resulted in the recovery of $0.231 per call, of which dial-around call traffic was to recover $32.80 over 142 calls. Since payment of dial-around compensation was typically delayed by a number of months, the Commission added an interest rate of 11.25%, or $0.009 per call, for a final per call rate determination of $0.24 per call, or a monthly compensation of $34.08 for 142 dial around calls at $0.24 per call. [10]

Since the Commission's *Third Report and Order*, there has been a significant history in the actual implementation of the Commission's dial-around compensation regime and the effect it has had on the payphone industry. The Commission's rejection of a market-based approach for a cost-base methodology necessitates that the scheme adopted by the Commission result in the actual recovery of the costs found by the Commission. The Commission determined that the costs to be recovered through dial-around compensation for a marginal payphone was $34.08 per payphone per month. Any failure to achieve this level of actual recovery means that the existing scheme of dial-around compensation failed to recover the payphone service provider's costs as determined by the Commission. This would not only violate the statutory directive for fair compensation for each and every completed call, but would threaten the goal of widespread deployment of payphones. A review of the actual implementation of this scheme clearly identifies that it has not fairly compensated payphone service providers for each and every completed call, nor has it enabled the widespread deployment of payphones. Change is needed.

[9] *Third Report and Order,* para. 151, fn. 302.
[10] *Third Report and Order,* para. 151, 152.

A review of the actual compensation received by payphone service providers reveals that they have been compensated far less than the $34.08 per payphone per month fundamental to the current dial-around compensation scheme. A review of the actual dial-around compensation payments received by payphone service providers reveals a massive shortfall between the $34.08 monthly compensation determined by the Commission to be recovered and the amount of actual dial-around compensation received.

The IPTA received the actual dial-around compensation payment history of independent payphone service providers since 1998 for approximately 25,000 IPP payphone lines in Illinois and adjacent states.[11] The data reflects that actual dial-around compensation payments for an average payphone have gone from a collection high of 80% of the $34.08 in 1998 to a low of 47% in 2002. Based on the number of paid calls to reach $34.08 in recovery of monthly costs, the average payphone in the IPTA data would have needed a dial-around rate of $0.299 per call in 1998 and $0.506 per call in 2002. But even those rates are too low, for they represent the call traffic for the average payphone.

For a marginal payphone, which the Commission estimated to be about 84.9% of the traffic of the national average call volume of 517 [12], a payphone service provider would have needed a rate of $0.353 per collected call in 1998 to $0.596 per collected call in 2002. These calculations are based upon a review of approximately 25,000 lines from 1998 through 2002 located in Illinois and other Ameritech states. This data reflects the average number of payphone lines that received dial-around compensation for each month of the year, and the average number

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[11] The aggregated data was provided by Data Net Systems, L.L.C. which is a major aggregator of dial-around billing and collection. Data Net Systems, L.L.C. is a co-plaintiff with APCC Services, Inc. and other plaintiffs in the extensive dial-around compensation collection litigation identified in the APCC Petition, pp. 14-16. These payment levels are consistent with those reported by IPPs throughout the United States.

[12] The Commission determined that the national average call volume was 517 calls per month. The Commission determined that the marginal payphone has approximately 439 calls per month. *Third Report and Order*, para. 144,

of dial-around calls per line for which compensation was received. Lines that receive no compensation were excluded from this data.[13] The actual dial-around compensation payment data reflects the following:

Year	Average Number of Payphone Lines Paid Per Month	Average Number of Dial-Around Calls Paid Per Line
1998	24,693	113.8
1999	25,049	100.4
2000	25,665	86.2
2001	24,297	75.6
2002	20,952	67.4

This data reflects the actual dial-around compensation received for the *average* payphone line during this time period. For each of these lines to have recovered the $34.08 determined by the *Third Report and Order*, the effective dial-around compensation rate would need to have been significantly adjusted upward. Additionally, the existing dial-around compensation rate does not include the costs of collection or the additional interest per call based upon a higher amount of per call payment being delayed. The following chart reflects (1) the effective per call rate needed to reach the recovery of $34.08 in monthly costs, and (2) an additional $0.007 per call in collection costs and $0.009 in additional interest.[14]

Year	Average Paid Payphone Lines Per Month	Average Dial-Around Calls Paid Per Line	(1) Effective Per Call Rate	(2) + $ 0.016 Collection and Interest
1998	24,693	113.8	$0.299	$0.315
1999	25,049	100.4	$0.339	$0.355
2000	25,665	86.2	$0.395	$0.411
2001	24,297	75.6	$0.451	$0.467
2002	20,952	67.4	$0.506	$0.522

147, 151. Therefore, the number of calls for a marginal payphone was 84.9% of the national average call volume that included IPP payphones, such as those in the Data Net Systems, L.L.C. data.

[13] Inclusion of lines with no compensation would have further reduced the average number of compensated calls per line.

However the Commission has determined that the per call rate needs be based on the call traffic for a marginal payphone to enable the Commission to meet its directive for the widespread deployment of payphones. If the marginal payphone cannot recover its costs, it would be removed. Therefore, the per call rate must be analyzed from the perspective of whether it enables a marginal payphone to recover $34.08 in costs. The Commission analysis determined that the marginal payphone traffic was approximately 84.9% of the national average call traffic per payphone station. Based on the marginal payphone having approximately 84.9% of the call traffic of an average payphone, the above data, indicates that a marginal payphone would need to have the following effective per call rates to reach a recovery of costs of $34.08 per month:

Year	Average Paid Payphone Lines Per Month	Average Dial-Around Calls Paid Per Line	(1) Effective Per Call Rate	(2) + $ 0.016 Collection and Interest
1998	24,693	96.6	$0.353	$0.369
1999	25,049	85.2	$0.400	$0.416
2000	25,665	73.2	$0.466	$0.482
2001	24,297	64.2	$0.531	$0.547
2002	20,952	57.2	$0.596	$0.612

When using cost as the basis for determining fair compensation, the essence of the scheme is whether the payphone service provider's actual receipt of compensation is sufficient to cover the costs determined by the Commission. The rate is simply a vehicle used for achieving the recovery of these costs and must be based upon the actual calls paid. As shown, based on the actual number of calls for which dial-around compensation payment was received, the rate since 1998 would had to have been between $0.369 and $0.612 per call to cover the $34.08 in costs found by the Commission, plus the inputs for collection costs and additional interest.

[14] Data Net Systems, L.L.C. provides aggregated dial-around billing and collection services like APCC Services, Inc. and is a co-plaintiff in the collection litigation. Therefore, this column reflects the additional collection costs and interest identified in the APCC Petition, Attachment 1, p.11, Ex. D.5.1, Lines 7&8.

Another factor that needs to be understood in setting rates sufficient to recover the identified costs is the continual annual decline in call traffic. As the number of calls declines every year, the rate per call needs to increase to reach the cost recovery objective. Establishing a rate that will recover the identified cost in 2004, based upon the actual number of dial-around calls that are paid, would necessarily have to increase for 2005, based upon the history of an annual decline in the number of calls paid. From 1998 to 2002, the number of dial-around calls per payphone for which compensation was paid declined an average of 12.25% per year. [15] In establishing a rate that will effectively compensate payphone service providers on a cost basis, the Commission must recognize that the rate will need to be adjusted on an annual basis to offset the established decline in call traffic from year to year, while costs remain relatively stable.[16]

Payphone services have suffered critical revenue erosion through the expansion of wireless services, and through an increase in the sizable percentage of call traffic attributable to dial-around calls for which compensation is not received. As recognized by the *NPRM*, payphone service providers are deprived of the freedom to fully respond to the market, thereby depriving them of the leverage needed to negotiate fair compensation from interexchange carriers for the provision of dial-around calls. The combination of these two factors has put the access to the network that payphones have historically provided in serious jeopardy, as recognized by the Commission. [17]

These forces have combined to steadily reduce the availability of payphones to the general public, in direct opposition to the statutory directive to ensure the widespread

[15] The number of dial-around calls for which compensation was actually received declined each year from 1998 through 2002 at the following rate: 1998-99 11.8%; 1999-2000 14.1%; 2000-2001 12.3%; 2001-2002 10.8%. The average annual decline in number of dial-around calls for which compensation was received from 1998 through 2002 was 12.25% per year.
[16] See APCC Petition, pp. 12-13; RBOC Petition, p.12.
[17] *NPRM*, para. 15.

deployment of payphone services. In its petition, the APCC noted not only the continuing decline in the number of independent payphones available, but also an increase in the speed of that decline as reflected in the Commission's own data:

Year	Decline in Independent Payphone Stations
1998-1999	1% [18]
1999-2000	3% [18]
2000-2001	7% [18]
2002-2003	13% [19]

These numbers are confirmed by the RBOC' data showing over a 20% decline from February, 1999 through August, 2001.[20]

Although Congress and the Commission have dedicated federal policy toward the promotion of the widespread deployment of payphone services for the benefit of the general public, the actions taken to date have been unable to ensure such deployment or the future stability of payphone services. Since the passage of the TA'96 there has been a dramatic decrease in the general number of payphone lines available. In Illinois, three of the largest IPPs in the Illinois market have exited the market since 1996. Two of the three largest IPPs in the nation, PhoneTel Technologies, Inc. and ETS Payphones, Inc., have sought bankruptcy protection. Of the remaining three regional Bell operating companies, SBC has sought to, and Bell South did, exit the payphone market. Although subject to significant fixed costs of operation, IPPs in Illinois have experienced consistent diminution of revenues available to cover their costs and to maintain operations.

As noted, the loss of revenues stems from two main sources: (1) market forces have caused an increase in cellular usage resulting in an overall decrease in the previous usage of

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[18] APCC Petition, p.8.
[19] *NPRM*, para. 15, fn. 44.
[20] *NPRM,* para. 15.

payphone stations; and (2) the lack of compliance with the requirement to compensate the payphone service providers for each and every completed dial-around call utilizing the payphone resulting in a significant loss of revenue for the payphone service providers. The impact of loss of traffic to cell phones is a natural market evolution as the telecommunications industry continues to adjust to changing technologies. IPPs though are impeded from responding to such market forces when a major segment of payphone revenue production, access code and toll free calls, are restricted regarding their ability to set market rate compensation needed to cover their costs and their changing revenue sources. Payphone service providers are not allowed to set the rates compensating the payphone service providers for use of the payphones, cannot block dial around calls, nor have payphone service providers been effective in enforcement for the collection of the compensation due on each and every completed access code and toll free call. A combination of these factors has placed payphone service providers in dire economic circumstances that not only prevents the expansion of the deployment of payphone services, but also threatens the payphone services very continuance. Although changing technologies are expected to continue to vary the means by which end users utilize the public network, the payphone system is a vital function in the overall universal service scheme, as determined by Congress and as supported by the decisions of this Commission. A failure to address the continuing problems plaguing the payphone industry within the regulatory scheme of access code and toll free call compensation would not only violate the express statutory requirements of compensation for each and every completed call, but would undermine the ultimate goal of widespread deployment of payphones for the benefit of the general public as enunciated in Section 276.

A review of Illinois IPPs' local exchange carrier ("LEC") switch records reflect corroborating evidence of the lack of enforcement of the statutory requirement to compensate for each and every completed call. A review of the conversation time for access code and toll free calls originating from payphones for the third and fourth quarter of 2002 reflects a significant discrepancy between the number of calls with significant conversation time, as defined by the ATIF/OBF-EMI industry standard, and the number of calls for which compensation was actually paid. In the third quarter 2002, there were 2,600,000 access code and toll free calls reporting conversation time as defined by the standards. Of these calls, 2,273,000 had conversation time equal to or greater than 10 seconds, or 87% of the calls. There were 1,689,000 calls with recorded conversation time equal to or greater than 45 seconds, or 65% of the calls. Yet, dial around compensation was paid on only 1,024,000 calls, or 39%.

In the fourth quarter 2002, there was conversation time recorded on 2,067,000 access code and toll free calls from these payphones. Of these 1,778,000 calls reported conversation time equal to or greater than 10 seconds, or 86% of the calls. There was conversation time of equal to or greater than 45 seconds on 1,326,000 calls, or 64% of the calls. Yet, access code and toll free call compensation was paid on only 851,000 calls, or 41%. These gross discrepancies reflect a serious deficiency in the enforcement mechanisms for ensuring payment on each and every completed call.

Enforcement problems originated with the inability of a payphone service provider to identify each and every carrier responsible for paying compensation and enforcing payment from such carriers. The Commission sought to address this problem in its previous order by moving the responsibility for tracking completed calls and for making compensation payments to the first facilities-based carrier receiving the call from the local exchange switch. This has mitigated some of the impact of carriers avoiding discovery of their uncompensated use of payphone service providers' payphones. Nonetheless, even with this correction in the implementation of the per call compensation process, numerous completed calls originating from payphones fail to be compensated. Some of the problems surrounding this shortfall result from the structural failure inherent in the current practice.

Presently the requirement to track the calls effectively lies with the payor, i.e. the carrier who provisions the access code and toll free calls. Effectively, the payor determines the amount to bill itself for the calls it is required to compensate the payphone service providers. The payor has the natural incentive to ensure that it does not charge itself for any calls that are not completed. However, the payor has no counter balancing incentive to correct any problems in the identification of each completed call or in ensuring payment thereof. Failure to make payment on each completed call for which the facilities-based carrier is liable goes undetected, since the information necessary to confirm or rebut the facilities-based carrier's payment lies within the facilities-based carrier's system. Therefore, the party determining the number of calls for which compensation is due, and required to make the payment, is also the party in possession of the information necessary to corroborate or challenge the accuracy of the payment to the payphone service provider-payee. Yet the party in possession of the information does not possess the incentive either to ensure that all calls due compensation have been compensated or to correct any problems in the system to ensure that each and every call that it is due compensation has been counted and paid.

The payphone service provider-payee has the incentive to make certain the system is accurate. However, the payphone service provider-payee is not in a position to identify each and every facilities-based carrier that provisions access code and toll free calls. Neither is the payphone service provider-payee able to self determine whether each call is completed. The information upon which the payphone service provider-payee must rely to determine the accuracy of the self declared payments rests with the facilities-based carrier that has already determined on how many of the calls compensation would be made. The payphone service provider-payee has no knowledge of which, or how many, calls the carrier determined that no compensation would be paid.

Under the current practice, there is no incentive for the facilities-based carrier to make the system more accurate, since any corrections or verification of the information could only identify additional calls subject to compensation. Any improvements in the tracking or accuracy of the call count information would only serve to increase the facilities-based carriers' payment obligations to the payphone service provider.

Since the facilities-based carrier has no incentive to negotiate a higher rate, or to increase the number of completed calls for which compensation is paid, there is no market-base incentive upon which a payphone service provider can enter into negotiations with a facilities-based carrier for a more equitable rate or accurate accounting of the compensable calls. Despite the Commission's interest in encouraging the parties to enter into private agreement, whereby a more effective and efficient compensation system may be devised and implemented, the incentives are disproportionately split between the payphone service providers and the facilities-based carriers. It is not surprising that private agreements have been the exception rather than the rule. It is necessary to correct the situation and to implement the statutory directive to compensate payphone service providers for each and every completed call from their payphones, while promoting the objective of the widespread deployment of payphone services. The Commission needs to devise corrections to the system which would enable a balancing of incentives between the parties, so the marketplace may promote a better and more efficient implementation and enforcement of the statutory requirements and goals.

II. THE COMMISSION NEEDS TO CREATE STANDARDS WHICH WILL PROMOTE ACCURACY IN PAYPHONE COMPENSATION PAYMENTS AND CREATE MARKET INCENTIVES FOR GREATER EFFICIENCY AND ENFORCEMENT.

The IPTA respectfully submits that the Commission should establish the following criteria that will seek to bring greater balance in promoting the objectives of TA'96 and the Commission's policies.

First, the Commission should continue to require the initial facilities-based carrier that receives an access code or toll free call from the local exchange switch to be responsible for the tracking and payment of compensation for those completed calls to the payphone service provider. This identification of the responsible facilities-based carrier should be based upon the carrier identification code ("CIC") to which the call is initially routed from the LEC switch where the payphone call originates. Second, the Commission should require the LEC to be responsible to providing to the payphone service provider the call detail and CIC information for each and every access code and toll free call from the payphone service provider's payphone from which the call originates. Recovery of any costs for this implementation should be factored into the cost basis and added to the rate for the per call compensation.

Third, the Commission should establish certain rebuttable presumptions that will enhance enforcement of the compensation scheme, enable a balance among the parties, and instill the proper marketplace incentives. The rebuttable presumptions should be as follows: (a) the LEC and/or payphone service provider call detail records should serve as the presumed basis for completed calls responsible for dial around compensation; (b) calls utilizing an 8YY number should be presumed to be toll free calls unless the facilities-based carrier identifies a particular 8YY number to the payphone service provider as an access code number; (c) calls should be presumed to be completed according to the following division: access code calls should be presumed completed 45 seconds after connect time; toll free calls should be presumed completed 99% of the time. Toll free calls, by their very nature, are subscriber 800 calls for which the subscriber has implemented a means for receipt and answer of the call, resulting in a near total completion rate. These rebuttable presumptions can be rebutted by the facilities-based carrier through the production of records sufficient to rebut the presumed call completions as identified above.

These recommendations provide the means and the incentives for a more effective implementation and enforcement of the statutory directives. The payphone service provider-payee, with the incentive to bill each completed call, will have the means to render a bill and the ability to identify the facilities-based carrier to invoice. The facilities-based carrier has the option of accepting the bill or rebutting the bill with the information in the carrier's possession. This is contrary to the existing situation whereby the facilities-based carrier has already determined that number of calls it intends to compensate the payphone service provider while retaining in its possession the information necessary to rebut any of the carrier's determinations. This would provide the facilities-based carrier with the incentive to ensure accuracy in the tracking and payment of the dial around compensation.

Through equalizing the bargaining positions of both the payphone service provider and the facilities-based carrier, a more accurate implementation and enforcement of the dial around compensation system could be reached. Furthermore, it would provide the needed balance of incentives for the Commission's long sought scheme of encouraging payphone service providers and facilities-based carriers to enter into private arrangements for a more effective and efficient means of determining compensation payments. Through this balancing of the incentives and the parties' positions, both sides will now have a reason to sit at the business table and negotiate an arrangement that both may find more effective than the Commission's default system.

The Illinois Public Telecommunications Association respectively submits that such modifications and adjustments would greatly enhance the Commission's enforcement of the Congressional intent that each and every completed call be compensated and that payphone services continue to be deployed for the benefit of the general public.

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Respectfully submitted,

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Michael W. Ward

Michael W. Ward, P.C.
1608 Barclay Blvd.
Buffalo Grove, IL 60089
(847) 243-3100

Attorney for the Illinois Public
Telecommunications Association